

**IN THE UNITED STATE BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Richmond Division

**In re: LINWOOD ONEAL FISHER,
Debtor.**

**Case Number: 13-35357-KLP
Chapter 13
Trustee: Suzanne E. Wade**

**LINWOOD ONEAL FISHER,
Plaintiff,**

AP Case Number: _____

v.

HOMEPLUS FINANCE CORPORATION,

and

**MARTIN J.A. YEAGAR, TRUSTEE,
Defendants.**

**Serve: Thomas Zimmerman
President, Homeplus Finance Corporation
600 Lairport Street
El Segundo, CA 90245**

**Serve: Incorp Services, Inc.
Registered Agent, Homeplus Finance Corporation
5716 Corsa Ave., Ste 110
Westlake Village, CA 91362**

**Serve: Martin J.A. Yeagar, Trustee
1522 Scandia Circle
Reston, VA 20190**

**COMPLAINT TO DETERMINE VALIDITY, PRIORITY, AND EXTENT OF JUNIOR
MORTGAGEE'S LIEN**

COMES NOW the Debtor-Plaintiff, Linwood Oneal Fisher, by Counsel, pursuant to 11 U.S.C. §506(a)(1) and Rules 3012 and 7001 of the Federal Rules of Bankruptcy Procedure, and respectfully moves this Court to determine the value of Homeplus Finance Corporation's

secondary lien, and to strip off this lien because it is wholly unsecured, and in support thereof, states as follows:

1. This is an action by the Debtor-Plaintiff (hereinafter the “Plaintiff”) under 11 U.S.C. §506(a) to determine the validity, priority, and extent of the interest of the secondary lien holder, Homeplus Finance Corporation (“Homeplus”), and its successors and assigns, and the Trustee, Martin J.A. Yeager, (together, the “Defendants”), in the residential property of the Plaintiff, and to modify that interest.
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334, and this is a core proceeding pursuant to 28 U.S.C. §157(b)(2).
3. On October 11, 2013, the Plaintiff filed for relief under Chapter 13 of the Bankruptcy Code.
4. Defendant Homeplus is a corporation organized and existing under the laws of California, with headquarters located at 600 Lairport Street, in El Segundo, California, 90245.
5. Trustee Martin J.A. Yeager is a Virginia resident, whose address is 1522 Scandia Circle, in Reston, Virginia, 20190.
6. The Plaintiff owns real estate (the “Real Property”), located at 3910 Orion Court, in Henrico, Virginia, 23231, and legally described as:

ALL THAT CERTAIN LOT, PIECE OR PARCEL OF LAND, WITH ALL IMPROVEMENTS THEREON AND APPURTENANCES THEREUNTO BELONGING, LYING AND BEING IN VARINA DISTRICT, HENRICO COUNTY, VIRGINIA, SHOWN AND DESIGNATED AS LOT 46, BLOCK J, SECTION 2, AS SHOWN ON THAT CERTAIN PLAT LAWNDALF FARMS, SECTION 2, FAIRFIELD DISTRICT, HENRICO COUNTY, VIRGINIA, DATED FEBRUARY 21, 1962, MADE BY LAPRADE BROS., CERTIFIED ENGINEERS AND SURVEYORS, RICHMOND, VIRGINIA, DULLY RECORDED APRIL 4, 1962, IN PLAT BOOK 33, PAGE 5 AND 6 IN THE CLERK’S OFFICE, CIRCUIT COURT, HENRICO COUNTY, VIRGINIA, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR

DESCRIPTION OF THE PROPERTY HEREIN
CONVEYED.

SUBJECT TO RESTRICTIONS, RESERVATIONS,
EASEMENTS, COVENANTS, OIL, GAS OR MINERAL
RIGHTS OF RECORD, IF ANY.

7. The Real Property is encumbered by a first lien, a recorded Deed of Trust with Bayview Loan Servicing, LLC (Exhibit A), executed on June 29, 2007, and recorded on July 5, 2007, securing a loan of \$155,000.00. As reflected in the Proof of Claim filed by Bayview Loan Servicing, LLC, the Plaintiff's balance on the loan at the time of filing was approximately \$151,908.32 (Exhibit B).
8. An Order Approving Loan Modification was entered by this Court on September 2, 2015, modifying the first lien with Bayview Loan Servicing, LLC, to a new principal balance of \$161,828.99 (Exhibit C).
9. The Real Property is further encumbered by a second lien, a recorded Home Equity Line Credit Deed of Trust (Exhibit D), executed on February 8, 2008, and recorded on March 27, 2008, securing a loan of approximately \$14,693.00. The original loan was serviced by Lifelong Coatings of America, and subsequently transferred to Homeplus Finance Corporation. As reflected in the Proof of Claim filed by Homeplus Finance Corporation, the Plaintiff's balance on this loan at the time of filing was approximately \$10,024.46 (Exhibit E).
10. At the time the Debtor filed his bankruptcy petition, the County of Henrico assessed the Real Property at \$116,700.00 (Exhibit F).
11. The amount owed on the first lien exceeds the value of the Real Property. Therefore, the second lien is wholly unsecured and is subject to avoidance.

WHEREFORE, the Plaintiff respectfully requests that the Court:

1. Value the Plaintiff's Real Property;
2. Declare that the first Deed of Trust in favor of Bayview Loan Servicing, LLC, is properly secured;
3. Declare that the second Deed of Trust in favor of the Defendants is wholly unsecured and hereby avoided; and

4. Direct that the Defendant shall merely be allowed an unsecured claim in the Plaintiff's bankruptcy case, not to exceed \$10,024.46;
5. Direct that the Defendant release its lien against the Real Property immediately upon entry of the Discharge Order in the Plaintiff's bankruptcy case; and
6. Grant such further relief as this Honorable Court deems just and proper.

Respectfully Submitted,

LINWOOD ONEAL FISHER

/s/ Keith A. Pagano, Esq.
Keith A. Pagano, Esq. VSB#47845
Pagano & Marks, P.C.
4510 S. Laburnum Ave.
Richmond, VA 23231
804-447-1002
Counsel for the Debtor-Plaintiff

CERTIFICATE OF SERVICE

I certify that on September 30, 2015 a copy of the foregoing Complaint was mailed via CM/ECF to Suzanne E. Wade at station17@ricva.net, and via first class mail, postage prepaid, or electronically to all parties listed below:

/s/ Keith A. Pagano, Esq.
Keith A. Pagano, Esq.

**Office of the United States Trustee
701 E. Broad Street
Richmond, VA 23219**

**Homeplus Finance Corporation
600 Lairport Street
El Segundo, CA 90245**

**Thomas Zimmerman
President, Homeplus Finance Corporation
600 Lairport Street
El Segundo, CA 90245**

Incorp Services, Inc.
Registered Agent, Homeplus Finance Corporation
5716 Corsa Ave., Ste 110
Westlake Village, CA 91362

Martin J.A. Yeagar, Trustee
1522 Scandia Circle
Reston, VA 20190

Linwood Oneal Fisher
3910 Orion Court
Henrico, VA 23231